No. 71-842

In the Supreme Court of the United States

OCTOBER TERM, 1971

LUTHER DALE BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-842

LUTHER DALE BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Northern District of Florida, petitioner was convicted of having received and concealed a motor vehicle that had traveled in interstate commerce, knowing it to have been stolen, in violation of 18 U.S.C. 2313. He was sentenced to eighteen months' imprisonment. The court of appeals affirmed (Pet. App.).

Petitioner's sole contention here is that the action of a federal agent in opening the locked door of the

stolen truck in order to find the vehicle identification number on the door constituted an illegal search and seizure. He urges this Court to grant certiorari to resolve the conflict between various courts of appeals over whether opening a car door to view the vehicle identification number amounts to an unreasonable search.

This issue is not presented, however, since, as the court below held, the agent here had probable cause to believe that the vehicle was stolen. The limited search in this case was thus justified under the long-established doctrine permitting a search without a warrant of movable vehicles. *Brinegar* v. *United States*, 338 U.S. 160; *Chambers* v. *Maroney*, 399 U.S. 42, 48-52.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1972.

---

[1] This Court has often denied certiorari in cases presenting the issue on which a conflict exists. *E.g.*, *United States* v. *Powers*, 439 F. 2d 373 (C.A. 1); certiorari denied, 402 U.S. 1011; *United States* v. *Williams*, 434 F. 2d 681 (C.A. 5), certiorari denied, 401 U.S. 1011.

☆ U. S. GOVERNMENT PRINTING OFFICE : 1972 464-711 6-11